

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

KELLI BAUGH and JUSTIN BAUGH,

Plaintiffs,

v.

BAYER CORPORATION, BAYER  
HEALTHCARE, LLC, BAYER  
PHARMACEUTICALS CORPORATION,  
BAYER HEALTHCARE  
PHARMACEUTICALS, INC., BERLEX  
LABORATORIES, INC., and BERLEX, INC.,

Defendants.

Civil Action No. \_\_\_\_\_

NOTICE OF REMOVAL

The defendants, BAYER CORPORATION, BAYER HEALTHCARE, LLC, BAYER PHARMACEUTICALS CORPORATION, BAYER HEALTHCARE PHARMACEUTICALS, INC., BERLEX LABORATORIES, INC., and BERLEX, INC., (hereinafter "Defendants"), by and through their undersigned attorneys, hereby give notice of the removal of this action (assigned Civil Action No. 11-CP-21-133) from the Court of Common Pleas for Florence County, South Carolina, to the United States District Court for the District of South Carolina, Florence Division, pursuant to 28 U.S.C. Sections 1332, 1441, and 1446, and in support of such removal, alleges and shows unto the Court as follows:

1. Defendants are the named defendants in the above-entitled action.
2. The Complaint in the above-entitled action was filed on January 21, 2011, in the Court of Common Pleas for Florence County, South Carolina, and is now pending in that court as Case Number 11-CP-21-133 (Summons and Complaint attached hereto as Exhibit A).

3. The above-entitled action was commenced against Defendants, by service of the Summons and Complaint on February 3, 2011.

4. This Notice of Removal is timely filed within thirty (30) days of service of the Summons and Complaint upon Defendants as required by 28 U.S.C. Section 1446(b).

5. As asserted by Plaintiffs' Complaint, at the time of the commencement of the above-entitled action, the Plaintiffs were and still are citizens of the State of South Carolina. (*See* Compl. ¶2).

6. At the time of the commencement of the above-entitled action, BAYER CORPORATION is an Indiana corporation with its principal place of business at 100 Bayer Road, Pittsburgh, Pennsylvania 15205.

7. At the time of the commencement of the above-entitled action, BAYER HEALTHCARE, LLC, is a limited liability company formed in Delaware with its principal place of business at 6 West Belt Road, Wayne, New Jersey 07470. Bayer HealthCare LLC's only member, Bayer Corporation, is an Indiana corporation with its principal place of business in Pennsylvania, and so Bayer HealthCare LLC is a citizen of Indiana and Pennsylvania for purposes of diversity jurisdiction.

8. At the time of the commencement of the above-entitled action, BAYER PHARMACEUTICALS CORPORATION was, prior to January 1, 2008, a Delaware corporation with its principal place of business in 400 Morgan Lane, West Haven, Connecticut. Effective as of January 1, 2008, Bayer Pharmaceuticals Corporation was merged into Bayer HealthCare Pharmaceuticals Inc. and ceased to exist.

9. At the time of the commencement of the above-entitled action, BAYER HEALTHCARE PHARMACEUTICALS, INC., formerly known as Berlex, Inc., formerly known

as Berlex Laboratories, Inc., is incorporated in Delaware and has its principal place of business at 6 West Belt Road, Wayne, New Jersey 07470. Before the name change in 2007, Berlex, Inc., formerly known as Berlex Laboratories, Inc., had its principal place of business in Montville, New Jersey.

10. Defendants hereby seek to invoke the jurisdiction of the United States District Court for the District of South Carolina, Florence Division, by removing this action in accordance with the provisions of 28 U.S.C. 1441(a), in that the above-entitled matter is a civil action having been brought in the state court when the District Court of the United States has original jurisdiction.

11. Specifically, the above-entitled action is a matter over which this Court has original jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1) in that the matter in controversy appears to exceed the sum or value of \$75,000.00 in actual damages, exclusive of interest and costs, and there is diversity of citizenship between the parties in this action; the Plaintiffs being citizens of the State of South Carolina, and the Defendants being citizens of states other than South Carolina as identified above.

14. Plaintiffs seek damages for medical injuries allegedly caused by the use of the intra-uterine device Mirena, manufactured, distributed, and marketed by Defendants. Plaintiffs are seeking unspecified and unlimited actual and punitive damages, and treble damages. Defendants are informed and believe that, based upon Plaintiffs' allegations that Defendants were negligent, reckless, willful and malicious, and that such behavior caused Plaintiff Kelli Baugh to suffer painful injuries, including perforation of her uterus, resulting in adhesions that were partially responsible for Plaintiff's hysterectomy and early onset of menopause, and based upon the Plaintiffs' claim and prayer for unspecified, unlimited actual and punitive damages, and treble

damages, the amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs. Therefore, both prerequisites for diversity jurisdiction exist.

15. Defendants file herewith, as part of this Notice of Removal, a copy of all process, pleadings, and orders filed in this action, consisting of the Summons and Complaint.

16. Immediately subsequent to the filing of this Notice of Removal in the United States District Court for the District of South Carolina, Florence Division, written notice of such filing will be given to the Plaintiffs by the undersigned counsel for Defendants, and copies of this Notice will be filed with the Clerk of Court for Common Pleas for Florence County, South Carolina.

17. If any question arises as to the propriety of this removal, Defendants request the opportunity to conduct discovery or brief any disputed issues, and to present oral argument in support of their position that this civil action is properly removable.

WHEREFORE, Defendants pray that the above-entitled action be removed to this, the United States District Court for the District of South Carolina, Florence Division, according to the above-referenced statutes, as amended.

McNAIR LAW FIRM, P. A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

By: s/Andrew G. Melling  
Andrew G. Melling, Fed. ID No. 7882  
Celeste T. Jones, Fed. ID No. 2225  
Attorneys for the Defendants

March 4, 2011